

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

THOMAS MICHAEL WEST,

:

Petitioner,

v.

:

LYNEAL WAINWRIGHT, Warden,
Marion Correctional Institution,

:

Respondent.

Case No. 3:18-cv-361

JUDGE WALTER H. RICE

DECISION AND ENTRY ADOPTING UNITED STATES MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATIONS ON DEMAND TO
VACATE (DOC. #22); OVERRULING PETITIONER'S OBJECTIONS
THERE TO (DOC. #23); OVERRULING PETITIONER'S DEMAND TO
VACATE (DOC. #21); DENYING CERTIFICATE OF APPEALABILITY
AND LEAVE TO APPEAL *IN FORMA PAUPERIS*; CASE TO REMAIN
TERMINATED

Petitioner Thomas M. West seeks habeas relief. However, he has not filed a habeas petition under 28 U.S.C. § 2254. Rather, he insists that he has a common law right to a writ of habeas corpus arising from the 1787 Ordinance of the Northwest Territory. Magistrate Judge Merz issued a Report and Recommendations, Doc. #14, explaining that this Court lacked jurisdiction to adjudicate any such claim.

On December 14, 2018, the Court adopted Magistrate Judge Merz's Report and Recommendations, overruled Petitioner's Objections, and dismissed the Petition for Writ of Habeas Corpus without prejudice for lack of jurisdiction. Doc.

#16. Judgment was entered. Doc. #17. Thereafter, on February 7, 2019, Petitioner attempted to file an Addendum to his Objections to the Report and Recommendations. Doc. #19. This was stricken as untimely. Doc. #20.

Petitioner then filed a "Demand to Vacate Documents ECF No. 16, 17 and 20." Doc. #21, which Magistrate Judge Merz construed as a motion seeking relief from judgment. On February 26, 2019, Magistrate Judge Merz issued a Report and Recommendations, Doc. #22, recommending that the Court overrule Petitioner's "Demand."

Petitioner has filed timely Objections to the Report and Recommendations, Doc. #23. He argues that Magistrate Judge Merz failed to fully address all of his arguments, and that both Magistrate Judge Merz and the undersigned should recuse ourselves for failure to be impartial and failure to adhere to constitutional mandates concerning the exercise of this Court's jurisdiction. He insists that he has a common law right to trial by jury on his habeas claims, and again demands that the Judgment be vacated and that Respondent be ordered to file an Answer.

For the reasons previously thoroughly explained by Magistrate Judge Merz in his November 28, 2018, Report and Recommendations, Doc. #14, Petitioner's Objections, Doc. #23, to the current Report and Recommendations, Doc. #22, are OVERRULED as frivolous. Moreover, Petitioner has not articulated any legal basis that would warrant recusal of either Magistrate Judge Merz or the undersigned.

Based on the reasoning and citations of authority set forth by Magistrate Judge Merz in his Report and Recommendations, as well as on a thorough *de novo*

review of this Court's file and the applicable law, the Court ADOPTS said judicial filing, Doc. #22, and OVERRULES Petitioner's "Demand to Vacate Documents ECF No. 16, 17 and 20." Doc. #21.

Given that the Court's decision herein would not be debatable among reasonable jurists, and because any appeal from this Court's decision would be objectively frivolous, Petitioner is denied a certificate of appealability, and is denied leave to appeal *in forma pauperis*.

The above-captioned case shall remain terminated on this Court's docket.

Date: March 21, 2019



WALTER H. RICE
UNITED STATES DISTRICT JUDGE